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The Battery Conservancy and Warrie Price

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BARBARA BROUGHEL,	: No. 07 Civ. 7755 (GBD)
	: :
Plaintiff,	: ECF Case
	: :
v.	: DECLARATION IN SUPPORT OF
	: DEFENDANTS' MOTION TO
THE BATTERY CONSERVANCY,	: EXCLUDE PLAINTIFF'S REPLY
WARRIE PRICE, CLAIRE WEISZ, AND	: MEMORANDUM OF LAW IN
MARK YOES, "DBA" WEISZ + YOES,	: FURTHER SUPPORT OF
	: PLAINTIFF'S MOTION FOR A
Defendants.	: PRELIMINARY INJUNCTION
	: :
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**DECLARATION OF RITA M. CARRIER IN SUPPORT OF DEFENDANTS'  
MOTION TO EXCLUDE PLAINTIFF'S REPLY MEMORANDUM OF LAW  
IN FURTHER SUPPORT OF PLAINTIFF'S MOTION FOR A PRELIMINARY  
INJUNCTION**

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CITY OF WASHINGTON    )  
                                  ) ss.:  
DISTRICT OF COLUMBIA )

RITA M. CARRIER declares:

1. I am counsel to defendants The Battery Conservancy and Ms. Warrie Price  
(collectively, "Defendants") in this action.

2. I am duly admitted to, and a member in good standing of, the Bars of the State of New York and of this Court.
3. I submit this declaration pursuant to Local Civil Rule 6.1(d) in support of Defendants' Motion to Exclude Plaintiff's Reply Memorandum of Law in Further Support of Plaintiff's Motion for a Preliminary Injunction.
4. Attached hereto are true and correct copies of the following:
  - (i) EXHIBIT A: Dec. 12, 2007 Letter of Barbara Hoffman to the Court;
  - (ii) EXHIBIT B: Plaintiff's faxed Reply Memorandum of Law in Further Support of Plaintiff's Motion for a Preliminary Injunction ("Reply") (which included the declarations of Barbara Broughel and Dale Martin Lanzzone, but which did not include any exhibits) sent May 10, 2008;
  - (iii) EXHIBIT C: April 25, 2008 Letter of Margaret Pfeiffer to the Court;
  - (iv) EXHIBIT D: Transcript of Hearing before the Court on April 8, 2008;
  - (v) EXHIBIT E: May 5, 2008 Letter of Barbara Hoffman to the Court;
  - (vi) EXHIBIT F: Eight pages of the Reply;
  - (vii) EXHIBIT G: Facsimile cover sheet dated May 10, 2008, from Ms. Hoffman to Mrs. Pfeiffer.
5. On May 9, 2008, Defendants were served via ECF only the eight pages of the Reply attached hereto as Exhibit F.
6. On May 10, at 7:49 a.m., Plaintiff's counsel sent a facsimile (attached hereto as Exhibit B) to Margaret K. Pfeiffer, lead counsel for Defendants, who was out of the country. The fax, which was sent to Mrs. Pfeiffer's Washington, D.C. fax

line, contained Plaintiff's Reply, but did not include any of the exhibits upon which the Reply purports to rely.

7. To date, Defendants have not received any of the exhibits upon which the Reply purports to rely.
8. Oral argument is scheduled for 10:30 a.m. on May 15, 2008, on Plaintiff's cross-motion for a preliminary injunction, the briefing of which the Reply is a part, as well as on Defendants' Motion for Judgment on the Pleadings.
9. Defendants have been prejudiced in their ability to effectively prepare for oral argument on said cross-motion by reason of Plaintiff's late and improper Reply, as is more fully set forth in the accompanying Memorandum of Law in Support of Defendants' Motion to Exclude Plaintiff's Reply.
10. Bringing Defendants' Motion to Exclude Plaintiff's Reply by Order to Show Cause, rather than by notice of motion, is necessary because of the extremely short time of three days between now and the scheduled oral argument. If forced to bring said motion by notice, Defendants will have no remedy for this prejudice to their ability to effectively prepare.
11. No previous application for any similar relief has been made by Defendants.

I declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the foregoing is true and correct. Executed on this 12<sup>th</sup> day of May, 2008.

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/s/  
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**CERTIFICATE OF SERVICE**

A copy of the foregoing Carrier Declaration has been served on all counsel  
this 12<sup>th</sup> day of May, 2008, via ECF.

\_\_\_\_\_/s/  
Rita M. Carrier